

APPLICATION SERIAL NO. 10/050,045
ATTORNEY DOCKET NO. 53394.000582
AMENDMENT AND REPLY TO OFFICE ACTION DATED 10/19/04

III. REMARKS

A. Status of the Claims

Claims 1-49 are pending in the application. Claims 1-7, 16 and 27-45 have been elected for prosecution, and claims 8-15, 17-26 and 46-49 were previously withdrawn from consideration. Claims 1-7, 16 and 27-45 stand rejected by the Examiner. By this amendment claims 1, 7, 16 and 34 are amended. No new matter is added.

B. Claim Rejections - 35 U.S.C. § 103

The Office Action rejects claims 1-7, 16 and 27-45 under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,123,694 to Pieniak, *et al.* ("Pieniak") and further in view of U.S. Patent No. 5,562,646 to Goldman, *et al.* ("Goldman"). Applicants respectfully traverse this rejection for at least the following reasons.

Three criteria must be met to establish a *prima facie* case of obviousness: (1) there must be some suggestion or motivation to modify the reference or to combine reference teachings, (2) there must be a reasonable expectation of success, and (3) the prior art references must teach or suggest all the claim limitations. *See* MPEP § 2142 *et seq.* Applicants respectfully submit that the prior art of record fails to teach or suggest all of the features of the pending claims and therefore there is no *prima facie* case of obviousness.

Claim 1

With respect to claim 1, the Office Action alleges that Pieniak discloses an absorbent article, that includes an absorbent core at least partially disposed between the topsheet and the backsheet, but that Pieniak does not disclose an absorbent laminate core comprising at least four layers. The Office Action further alleges that Goldman discloses an absorbent laminate core comprising at least four layers, and that it would have been obvious to one of ordinary skill in the art to modify the core of Pieniak by

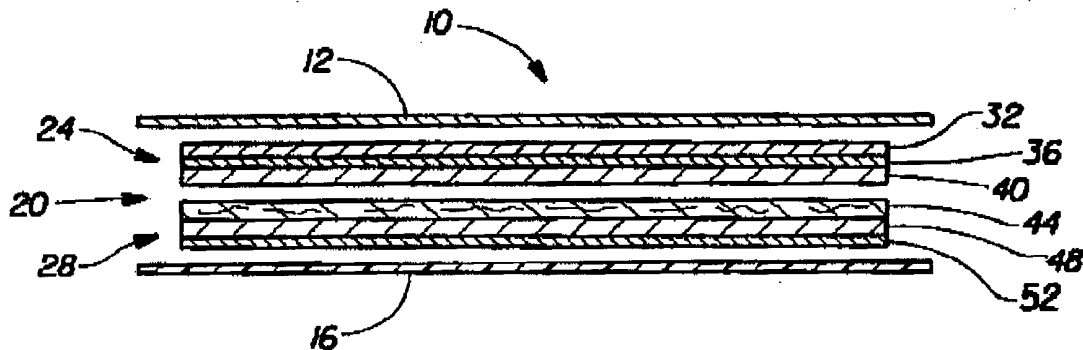
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providing the core of Goldman. The Examiner specifically alleges that Goldman discloses (in reference to Figure 1):

an absorbent laminate core (20) comprising at least four layers (32, 36, 40, 44, 48, 52) whereby two of the layers are outer layers comprising an upper layer (36) and a lower layer (52) and one of the inner layers (44) disposed between the upper and the lower layer is a central fibrous layer containing from about 30 to about 50% by weight super absorbent polymer (col. 34, lines 36-47) whereby the absorbent laminate core comprises at least one additional inner layer disposed between the upper and lower layer . . . as set forth in col. 33, lines 50-61.

Office Action, pages 2-3. However, the Applicants respectfully submit that Goldman does not teach an absorbent laminate core as claimed, because Goldman fails to teach the central fibrous layer having from about 30% to about 50% by weight super absorbent polymer, as recited in claim 1.

Goldman discloses an absorbent member that has a multi-layer absorbent core as exemplified by Figure 1 reproduced below:



Goldman, Figure 1. As shown in Figure 1, Goldman discloses a multi-layer absorbent core (20) having an upper assembly (24) and a lower assembly (28). The upper assembly comprises an upper acquisition/distribution layer (32), and a first hydrogel-forming absorbent polymer layer (40) separated from the acquisition layer (32) by a

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tissue layer (36). The lower assembly comprises an upper fibrous layer (44), a lower layer (48) that comprises the second hydrogel-forming absorbent polymer, and a tissue layer (52). See also, Goldman at col. 33, lines 45-61.

In comparison, claim 1 recites an absorbent article having, *inter alia*, an absorbent laminate core having at least four layers, including two outer layers (an upper layer and a lower layer), a central fibrous layer having from about 30% to about 50% SAP, and at least one additional inner layer. The central fibrous layer and the additional inner layer are positioned between the upper and lower layer.

The central fibrous layer of claim 1 contains from about 30 to about 50% by weight superabsorbent polymer. The Examiner alleges that the Goldman teaches a central fibrous layer (layer 44) that contains from about 30 to about 50% by weight super absorbent polymer. However, Goldman specifically teaches that layer 44 "can be substantially or completely free of hydrogel-forming polymer." Goldman, col. 34, lines 36-37. Alternatively, "[t]here can be some, for example, up to about 30% of the second hydrogel-forming absorbent polymer in the upper half of combined layers 44 and 48." Goldman, col. 34, lines 45-47. Thus, layer 44 is not a central fibrous layer comprising from about 30 to about 50% by weight super absorbent polymer, as recited in the present invention.

The only other layer of Goldman located between the upper layer (36) and lower layer (52) (these are the two tissue layers of Goldman)¹ that contains fibers and hydrogel-forming absorbent polymer is layer 48. However, Goldman discloses that layer 48 contains more than 50% of the absorbent polymer. For example, Goldman discloses that "more than half and usually at least about 70%, of the hydrogel-forming

¹ The presently amended claims recite that the upper and lower layers comprise a tissue or tissue-like material.

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absorbent polymer in [layers 44 and 48] is located in the lower half thereof." Goldman, col. 34, lines 39-42. In addition, "at least about 50%, and more typically at least about 70 or about 80% of layers 40 or 48 are hydrogel-forming absorbent polymer." Goldman, col. 34, lines 51-54. Thus, Goldman completely fails to teach or suggest an absorbent laminate comprising an upper layer, a lower layer and a central fibrous layer comprising from about 30 to about 50% by weight super absorbent polymer, as recited in claim 1 of the present invention.

Applicants hereby amend claim 1, to further clarify the structure of the upper and lower layers, consistent with the specification, such that the upper layer and lower layers are comprised of a tissue or tissue-like material. Support for this amendment may be found in the specification, where Applicants disclose that

Upper layer 280 and lower layer 282 can be made of any suitable material capable of containing the inner layers (284, 286, 288, 286', etc.) of absorbent laminate core 28. Preferably, upper layer 280 is hydrophilic and fluid pervious, and lower layer 282 is hydrophobic and fluid impervious. More preferably, upper layer 280 and lower layer 282 are comprised of the same tissue-like material.

Specification, page 28, lines 11-16. This amendment further distinguishes claim 1 from Pieniak and Goldman because the amended claim requires the central fibrous layer and the additional inner layer to be located between upper and lower tissue or tissue-like layers.

In summary, neither Pieniak nor Goldman teach or suggest an absorbent article with an absorbent laminate core having at least four layers, an upper layer, a lower layer and two inner layers, where the upper and lower layers are comprised of a tissue or tissue-like material, and where one of the inner layers is a central fibrous layer comprising from 30% to about 50% superabsorbent polymer. Therefore, claim 1 is patentable over Pieniak in view of Goldman. Applicants respectfully request withdrawal of this ground of rejection, and allowance of claim 1.

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Claim 7

With respect to claim 7, the Office Action alleges that Goldman further discloses an absorbent article having a fluid acquisition layer (32). As discussed above, Goldman teaches a multiple-layer absorbent core having upper tissue layer 36 and lower tissue layer 52, and upper acquisition/distribution layer 32. See Goldman, Figure 1. However, Goldman's acquisition/distribution layer 36 is not an inner layer, i.e., it is not positioned between the upper layer 36 and lower layer 52, as required by claim 7 of the present invention.

Claim 7 is hereby amended to clarify the claimed feature consistent with the specification such that the absorbent laminate contains one additional inner layer. As discussed above, neither Pieniak nor Goldman teaches or suggests an absorbent article having a central fibrous layer comprising from about 30 to about 50% by weight super absorbent material. In addition, neither Pieniak nor Goldman teaches or suggests an absorbent article having one additional inner layer (a fluid acquisition layer) positioned between the upper and lower layers. Therefore, claim 7 is patentable over Pieniak in view of Goldman. Applicants respectfully request withdrawal of this ground of rejection, and allowance of claim 7.

Claim 16

With respect to claim 16, the Office Action alleges that Goldman discloses an absorbent article, as shown in Figure 1, having an upper layer (32) a lower layer (52), a central fibrous layer (44), and an additional layer (36), where the additional layer is selected from a fluid acquisition layer, or a combination of a wicking and distribution layer. However, in addition to the aforementioned deficiencies of Pieniak and Goldman references, Applicants respectfully submit that Goldman's layer 32 is not an upper layer as recited in claim 16.

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As discussed above, Applicants have amended claim 1, such that the upper layer and lower layer are comprised of a tissue or tissue-like material. In addition, claim 16 is amended such that the absorbent laminate comprises one additional inner layer that is a fluid acquisition layer or a combination of a wicking and distribution layer. Support for this amendment may be found, for example in Figures 3-13, where the additional layer (member 286) is located between outer layers 280 and 282.

As amended, claim 16 requires that the additional inner layer is located between an upper layer and a lower layer. Because the upper layer is a tissue or tissue-like nonwoven material, layer 32 (an acquisition/distribution layer), is not an upper layer as alleged in the Office Action. As Goldman describes, "[t]he fibrous material [of layer 32] can be any fibrous material that has a suitable resistance to load when wet, i.e., is able to maintain satisfactory void volume under such conditions." Goldman, col. 34, lines 7-9. One of ordinary skill in the art would clearly recognize that a tissue would be incapable of maintaining a satisfactory void volume when wet. Therefore, Goldman's layer 32 cannot be a tissue or a tissue-like material, such as the upper layer recited in claim 16. Therefore, only tissue layers 36 and 52 of Goldman would be considered to be an upper layer and/or lower layer as recited in claim 16.

Neither Pieniak nor Goldman teaches or suggests a central fibrous layer comprising from about 30 to about 50% super absorbent material, located between the upper and lower layers of the absorbent laminate. In addition, neither Pieniak nor Goldman teaches or suggests an additional inner layer that is a fluid acquisition layer or a combination of a wicking and distribution layer located between upper and lower layers of the absorbent laminate. Therefore, claim 16 is patentable over Pieniak in view of Goldman. Applicants respectfully request withdrawal of this ground of rejection, and allowance of claim 16.

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Claims 2-6 and 27-33

Claims 2-6 and 27-33 depend, directly or indirectly, from claim 1, and as such contain all of the features and elements of independent claim 1. Therefore, for at least the reasons provided above, Applicants respectfully submit that claims 2-6, 16 and 27-33 are also patentable over Pieniak in view of Goldman. Applicants respectfully request withdrawal of this ground of rejection, and allowance of claims 2-6 and 27-33.

Claim 34

With respect to claim 34, page 6 of the Office Action refers Applicants to the preceding rejection of claim 1 over Pieniak in view of Goldman, because claim 34 recites a method that would necessarily flow from the article claim 1. As previously discussed, the Applicants submit that claim 1, as amended, is patentable over Pieniak in view of Goldman. Applicants have amended claim 34 in a manner that is consistent with the amendment of claim 1. Applicants respectfully submit that neither Pieniak nor Goldman teaches or suggests a method of making an absorbent article comprising an absorbent laminate core having an upper layer and lower layer comprised of a tissue or tissue-like material, and comprising a central fibrous layer at least partially disposed between the upper layer and lower layer, where the central fibrous layer has from about 30% to about 50% by weight of superabsorbent polymer. Therefore, claim 34 is patentable over Pieniak in view of Goldman. Applicants respectfully request withdrawal of this ground of rejection, and allowance of claim 34.

Claims 35-45

Claims 35-45 depend, directly or indirectly, from claim 34 and as such contain all of the features and elements of independent claim 34. Therefore, for at least the reasons provided above, Applicants respectfully submit that claims 35-45 also are patentable over Pieniak in view of Goldman. Applicants respectfully request withdrawal of this ground of rejection, and allowance of claims 35-45.

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IV. CONCLUSION

The Applicants respectfully submit that the application is in condition for allowance. Should any outstanding issues remain, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,
HUNTON & WILLIAMS LLP

Dated: Feb. 22, 2005

By:



Betsy Johnson
Registration No. 55,305

Hunton & Williams LLP
1900 K Street, N.W., Suite 1200
Washington, D.C. 20006-1109
(703) 714-7627 - direct
(703) 714-7410 - fax